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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <b>RSW920010029US1</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>October 10, 2005</u> Signature: 		Application Number <b>09/841,136</b>	Filed <b>04/24/2001</b>
		First Named Inventor <b>Jeffrey Douglas Haggard</b>	
Typed or printed name <u>Susan E. Freedman</u>		Art Unit <b>2143</b>	Examiner <b>Asghar H. Bilgrami</b>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.  
 assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)  
 attorney or agent of record.  
Registration number \_\_\_\_\_  
 attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 29,614

  
Signature**Mitchell S. Bigel**

Typed or printed name

**919-854-1400**

Telephone number

**October 10, 2005**

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

<input checked="" type="checkbox"/>	*Total of <u>1</u> forms are submitted.
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 2143**



Attorney Docket No. RSW920010029US1

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Haggar et al.  
Serial No.: 09/841,136  
Filed: April 24, 2001  
For: TECHNIQUE FOR EFFICIENT DATA TRANSFER WITHIN A VIRTUAL NETWORK

October 10, 2005

**CERTIFICATE OF MAILING**

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Susan E. Freedman  
Date of Signature: October 10, 2005

**REASONS IN SUPPORT OF APPLICANTS'  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 09-0461.

## REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the final Office Action mailed July 14, 2005 and the Advisory Action mailed September 19, 2005. All of the claims stand rejected under 35 USC §102(b) or §103(a) over U.S. Patent 4,872,159 to Hemmady et al. Applicants respectfully submit that Hemmady et al. does not describe or suggest many of the recitations of the pending claims, for at least the reasons discussed herein. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity, and without waiving the right to argue additional grounds should this Request be denied, Applicants will merely point out the Examiner's omissions of one or more essential elements needed for a *prima facie* rejection.

Claim 1 recites:

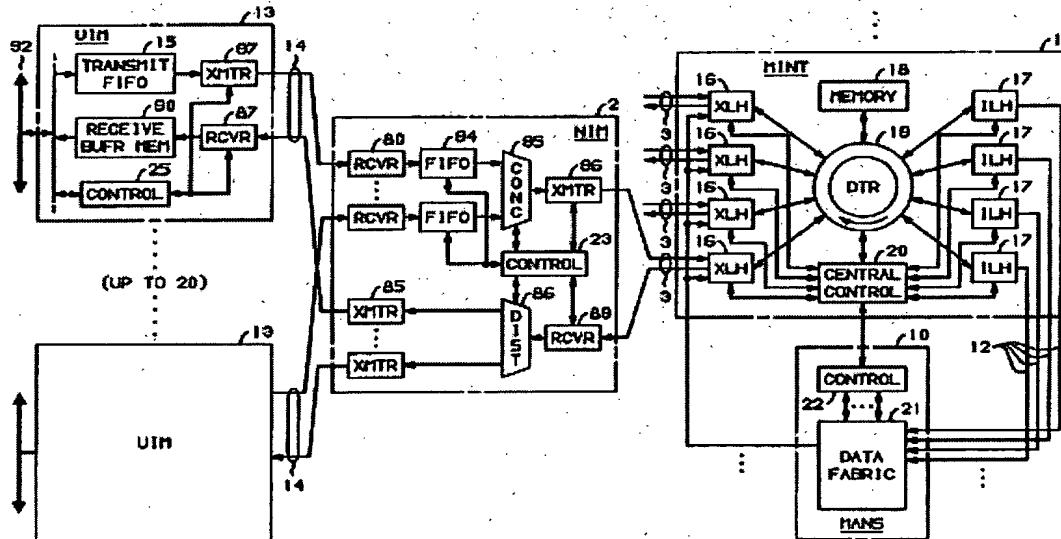
1. A method of transferring data in a virtual network, comprising:

allocating one or more outbound packing buffers for each of a plurality of particular network addresses;

packing outbound data packets into appropriate ones of the outbound packing buffers, according to a network address within a header of each outbound data packet; and

transmitting each outbound packing buffer onto the virtual network in a single transmission operation. (Emphasis added.)

Claim 1 was rejected under 35 USC §102(b) as being anticipated by Figure 4 of Hemmady et al. and the accompanying description. Figure 4 of Hemmady et al. is illustrated below:



Assume, for the sake of argument, that Figure 4 of Hemmady et al. illustrates a virtual network. The individual users are shown on the left as user interface modules (UIM) 13, and the network is shown on the right as a memory and interface module (MINT) 11 and a metropolitan area network switch (MANS) 10. Also, assume that the outward packing buffers are the FIFO registers 94 in the middle of the Figure. Even if all of these assumptions are made, it is clear from Figure 4 of Hemmady et al. that each FIFO 94 corresponds to a different user interface model (UIM) 13, as shown by the arrows 14 that connect the respective UIM to the respective FIFO 94. Thus, the FIFOs correspond to a particular user. The FIFOs are not allocated for each of a plurality of particular network addresses as recited in Claim 1, because the network addresses of Figure 4 of Hemmady et al. would correspond to the memory and interface module (MINT) 11 and/or the metropolitan area network switch (MANS) 10. Similarly, the arrows 14 between the UIM 13 and the FIFOs 94 also teach away from the recitation in Claim 1 of "packing outbound data packets into appropriate ones of the outbound packing buffers according to a network address within a header of each outbound data packet." Rather in Hemmady et al., the outbound data packets are packed based on the sending user. For at least these reasons, Hemmady et al. does not anticipate, and, in fact, teaches away from, the above-quoted recitations of Claim 1.

The Advisory Action states that Applicants' arguments are not persuasive "because the UIM is network interface..., which requires netowrk [sic] address for communication with other device in a network, thereby network address is inherent". Even if this is so, the packing that is performed in Figure 4 of Hemmady et al. relates to the originating user interface module 13, not to a particular network address for an outbound data packet. For at least these additional reasons, the recitations of independent Claim 1 are not found in Hemmady et al. and, indeed, Hemmady et al. teaches away from the above-quoted recitations of Claim 1. Similar analysis applies to analogous independent system Claim 8 and computer program product Claim 14.

Dependent Claims 2 and 3 were also rejected over 35 USC §102(b) in view of Hemmady et al. These claims recite in part that the particular network address of Claim 1 is a next-hop address on the virtual network. Assuming, for the sake of argument, that a particular network address is inherent in a transmission from a user interface module 13, Hemmady et al. does not describe that the network address should be a "next-hop address on a virtual network", as recited in Claims 2 and 3, as opposed to one of many other addresses

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on a virtual network. Accordingly, these claims are independently patentable. Similar analysis applies to analogous Claims 9 and 15.

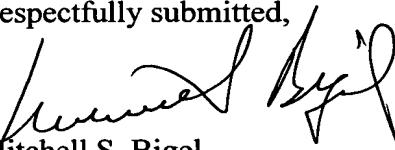
Independent Claim 5 also was rejected under 35 USC §102 in view of Hemmady et al. Independent Claim 5 is similar to Claim 1, except that it also recites:

packing outbound data packets into selected frames of selected ones of the outbound packing buffers, when a header of the outbound data packet to be packed specifies the first network address and the second network address which correspond to the selected outbound packing buffer and the selected frame;....

This claim is independently patentable because the final Office Action has not indicated any passages of Hemmady et al. that describe these two addresses, nor would these two addresses be inherent. Similar analysis applies to analogous independent system Claim 11 and analogous computer program product Claim 17. Similar analysis for Claim 2 applies to dependent Claims 6, 12 and 18.

Accordingly, for at least the reasons discussed above, many of the recitations of the independent claims and the dependent claims are simply not described or suggested by the cited reference. Therefore, Applicants respectfully request that the present application be reviewed and reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



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